the shareholders are as guiltless as would be the executors of a natural person in a similar case. It would be as well to say that, where executors are legatees under the will of the testator, they should be liable in damages for the tort of the deceased, since they profit by taking a share of his property. Such a proposition would lose sight of the fact that the action of tort, while remedial as viewed on the part of the plaintiff, must of necessity be based on a wrong done by the defendant. The cause of action in tort can not be considered as standing on the same basis as an action on contract, despite the holding in *Hepworth* v. *Union Ferry Co.*, *supra*, that peculiar result having been reached on account of a special provision in the charter of the ferry company, rendering it liable for action *ex delictu*, even after dissolution. This was pointed out in *Matter of Yuengling Brewing Co.*, 24 App. Div. 223 (1891); the latter case holding that the action for personal injury did not survive.

One further point, dwelt on by the Court, must be considered. In speaking of 2 R. S. 447, PARKER, C. J., says (p. 78): "Nor has the language of our statute which authorizes the continuance of certain actions for moneys against the executors and administrators of wrongdoers, but excepts actions for libel, slander, assault and battery and false imprisonment, been held to include the civil death of either individuals or corporations, and it is sufficient for our present purpose to say that such an intent on the part of the Legislature cannot be spelled out of the language employed by it." The dissolution of a corporation may be called a civil death in order to distinguish it from the physical dissolution of a human being, but in no way does it resemble the civil death of an individual. For, in the case of the individual, the person lives on after the civil death, while on the dissolution of the corporation, the entity or artificial being ceases to exist and can not be revived or reborn, save by an act of the Legislature. *National Bank* v. *Colby*, *supra*.

Hence, whether it be a person or a corporation which has done an injury, the effect of the death of the former or the dissolution of the latter should be identical; for, in each case, the entity of the wrongdoer has passed away and an action against executors on the one hand, or trustees on the other, would, in effect, tend to fasten pecuniary liability on persons who have done no wrong.

RATIFICATION BY AN UNDISCLOSED PRINCIPAL.—Roberts, a broker, was authorized by the defendant to buy wheat at 45s. 3d. Such purchase being impossible, he bought from the plaintiff at 45s. 6d., hoping that the defendant would take over the contract, and intending it to be for his benefit. The defendant approved Roberts' action, and took over the contract, but later refused to perform. On these facts the House of Lords has decided that the defendant acquired no right and incurred no liabilities on the contract by his attempted ratification, since Roberts did not *profess* to be acting

for any other than himself. *Keighley, Maxted & Co.* v. *Durant* (1901) A. C. 240.

The decision is put on these grounds: (1) that the question has already been settled by the authorities; (2) that even were this not so, when a contract has once been closed, the parties thereto are fixed as unalterably as any other of its terms; (3) that to discover and prove what the intention of the agent was is an impossibility; and (4) that to permit such a ratification would be to add an anomaly to the already anomalous doctrine of the undisclosed principal.

The counsel for the plaintiff "boldly" asserted that the opinions upon the point are mere *dicta*, and that the case has never been decided. Though the court thought otherwise, the cases cited do not support its holding. In not one of them has the point been raised; in these cases the agent has either openly professed to act for his principle, *Ancona* v. *Marks*, 7 H. & N. 685 (1862); *Bobbett* v. *Pinnell*, 1 Ex. 368 (1876), or, he has not intended so to act, and has therefore not professed so to act. *Saunderson* v. *Griffith*, 5 B. & C. 909 (1826); *Vere* v. *Ashby*, 10 B. & C. 288 (1829); *Wilson* v. *Tumman*, 6 M. & G. 236 (1843); *Falke* v. *Ins. Co.*, L. R. 34 Ch. Div. 234 (1886). It is true that in all these cases the language used is that as the agent *professed* to act, or did not *profess* to act on behalf of another, that other might or might not ratify the act. As applied to the facts presented there for decision, the language is suitable; but it cannot be taken as decisive of the point here involved. Had this case been in the minds of the judges there speaking it is conceivable that their language would have been different. In *Bird* v. *Brown*, 4 Ex. 786 (1851), there is a *dictum* directly on the point *contra* to the principal case, and though the *dictum* is omitted in another report of the case, 19 L. J. (N. S.), 154, it is more probably an omission in the latter, than an addition in the former case. Finally, the case of *Soames* v. *Spencer*, 1 D. & R. 32 (1822), is dismissed with the short statement that it does not appear what was the form of the contract sued on. But the decision was that, where one of two co-tenants of land contracts to sell the whole land as his own, intending to act for his co-owner, the co-owner can ratify the contract. And in *Foster* v. *Bates*, 12 M. & W. 226 (1843), the court says that wherever one *means* to act for another, a subsequent ratification is equivalent to a prior command. *In re Tiedermann* v. *Ledermann* (1899) 2 Q. B. 66, holds that a contract made by an agent professing to act for another, but intending in his own mind to act for himself can be ratified. The case is right, for a man could not be allowed to contradict his expressed intention.

Though, as a general rule, a contract once made is closed, and the terms thereof cannot be changed, yet there is a large class of cases in the law of agency, in which on equitable grounds a new party is introduced, both to sue and to be sued. If this be true where there is a prior authority, it should be true where there is a ratification, for a ratification is the equivalent of a prior authority. Bracton de Legibus, f. 171 b; *Dean, etc., of Exeter* v. *Serle de Lanlarazon*, Y. B. 30 Ed. I, 126, 129. So logically is

this doctrine applied that it has been held that the ratification of an act, involves the ratification of torts committed by the agent in its performance. *Dempsey* v. *Chambers*, 154 Mass. 330 (1891). In the case under discussion, therefore, the defendant should have been treated as an undisclosed principal. If it be argued that the third party did not know that he was contracting with any other than the agent, it should be remembered that he would not have known this fact, had there been a prior authority. In both cases the agent secretly intends to benefit another. If in the one case the third party suffers no harm, and equity requires that the undisclosed principal be liable, so does it equally in the other, for, as regards the third party, the cases are identical. Likewise, as between the principal and agent the case is unchanged, whether the agent *profess* to act for the principal or no. In both cases he does act for the principal, and in both cases the principal assents to the act.

If the court decides the case on the difficulty of proving what was the intention of the agent, it grounds its decision arbitrarily on its conception of convenience, and not on the principles of law involved in the case. It is to be noted, moreover, in this connection, that the state of a man's mind in cases of conditional contracts where performance is to be to the defendant's satisfaction, is examined and determined. *Brown* v. *Foster*. 113 Mass. 136 (1873); *Exhaust Ventilator Co.* v. *C. M. & St. P. R. Co.*, 66 Wis. 218 (1886).

Finally, though it be true that the doctrine of the undisclosed principal is anomalous from the point of view of contract law, yet it is as firmly settled in the law of agency as that of either the named or unnamed principal; that is to say, principals may be named, unnamed or undisclosed. Each is capable of acting through an agent having a prior authority. A ratification is the equivalent of a prior authority. Each should, therefor, have the right to ratify. And yet the decision in this case denies the right to an undisclosed principal. Surely the result of the decision is an anomaly in the law of agency.

THE TAFF VALE RAILWAY CASE.—A decision of importance in its effect upon the English law relating to labor organizations, was handed down in July by the House of Lords. *Taff Vale Ry.* v. *Amalgamated Society of R'y Servants* (1901) A. C. 426. The case turned on the construction of the Trade Union Acts, 1871 and 1876; the question being whether a union registered under the Acts could be sued in its registered name. These statutes do not provide for incorporation, nor do they, in terms, allow suits to be brought in this manner; but they recognize the legal validity of the unions, make provision for their registration, for the vesting of property in trustees, and for the bringing of actions in respect of such property in the name of the trustees.

In the principal case, suit was brought for an injunction and damages for unlawful picketing; picketing, except when the acts are committed for the sole purpose of obtaining or communicating information, being made illegal by English statutes, and all picketing